EXECUTIVE NOTE

THE HISTORIC ENVIRONMENT (AMENDMENT) (SCOTLAND) ACT 2011 (SAVING, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ORDER 2011

S.S.I. 2011/377

1. The above instrument was made in exercise of the powers conferred by section 32(1) and (2) of the Historic Environment (Amendment) (Scotland) Act 2011 (asp 3). The instrument is subject to the negative procedure.

Policy Objectives

2. The purpose of the instrument is to make saving, transitional and consequential provisions in relation to the commencement of various provisions of the Historic Environment (Amendment) (Scotland) Act 2011 ("the 2011 Act").

3. The 2011 Act is a tightly focused piece of amending legislation that will enhance the ability of the regulatory authorities to manage the historic environment in a sustainable way for the enjoyment and benefit of future generations. The Bill for the Act was introduced in Parliament on 4 May 2010 and passed on 20 January 2011. The Act received Royal assent on 23 February 2011.

4. Certain provisions of the 2011 Act were brought into force on 30 June 2011 the remaining provisions of the 2011 Act are to come into force on 1 December 2011. Some of the sections of the 2011 Act that will be commenced on that date require saving, transitional and consequential provisions to allow for full implementation of the 2011 Act and in order to ensure a seamless transition from the old law to the new law.

Summary of each article

5. Article 1(1) sets out the title of the instrument and prescribes that it will come into force on 1 December 2011.

6. Article 1(2) clarifies that references in the regulations to "the 1979 Act" means the Ancient Monuments and Archaeological Areas Act 1979; references to "the Act" means the Historic Environment (Amendment) (Scotland) Act 2011; and, that references to "the Listed Building Act" means the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

7. Section 3 of the 2011 Act modifies the provisions relating to defences where an offence may be committed under sections 2, 28 and 42 of the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act"). Article 2 provides that these provisions of the 1979 Act will continue to apply unamended by section 3 in respect of acts occurring before 1 December 2011.

8. Article 3 provides that paragraphs 2(1) and (2) of Schedule 1 to the 1979 Act (which are replaced by changes introduced by section 15(3) of the Act) will continue to apply in relation to applications for scheduled monument consent made before 1 December 2011.

9. Section 16 of the Act introduces a power to allow the Scottish Ministers to refuse to entertain repeat applications for scheduled monument consent in certain circumstances. Article 4 provides that this power is only to apply to applications made after 1 December 2011.

10. Section 20 of the 2011 Act introduces section 10A into the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act") which enables a planning authority to decline to determine an application for listed building consent in certain circumstances. Article 5 provides that section 10A shall only apply to applications made after 1 December 2011.

11. Article 6 preserves an applicant's right to a hearing in relation to an application for listed building consent called in by the Scottish Ministers before 1 December 2011 or appeals made before that date which are to be determined by an appointed person under Schedule 3 to the 1997 Act.

12. Articles 7 and 9 respectively amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 to update the definition of "historic garden or designed landscape" to refer to the new inventory to be compiled and maintained under section 32A of the 1979 Act introduced by section 11 of the 2011 Act.

13. Article 8 amends the Transport and Works (Scotland) Act 2007 (Consents under Enactments) Regulations 2007 to assimilate procedures where a project requires an application under section 2 of the Transport and Works (Scotland) Act 2007 and scheduled monument consent.

Consultation

14. No consultation was undertaken on this instrument. As noted above the purpose of this instrument is to make saving, transitional and consequential provisions in relation to the commencement of various provisions of the 2011 Act.

15. The provisions of the 2011 Act were subject to consultation in 2009 when a draft Bill was subject to full public consultation. The provisions of the 2011 Act were also subject to detailed scrutiny during the passage of the Bill through parliament between 4 May 2010 and 20 January 2011. It was not thought appropriate or proportionate therefore to consult on an instrument which provides for minor technical saving, transitional and consequential changes required by the commencement of various provisions of the 2011 Act.

Impact Assessments

Equalities Impact Assessment

16. The Regulation's are not discriminatory on the basis of gender, race, disability, marital status, religion or sexual orientation. The public consultation on the draft Bill noted that is was the Scottish Government's view that it was "unlikely that the provisions of the Bill would have significant equalities impacts" and invited views on the proposed amendments in that regard. The consultation document was sent to all the key equalities agencies in Scotland and none offered an alternative view on this issue. The Scottish Government is satisfied therefore that the Regulations will have no equalities impacts.

Strategic Environmental Assessment (SEA)

17. Historic Scotland has applied the criteria specified in Schedule 2 of the Environmental Assessment (Scotland) 2005 Act to the provisions of the Act and have determined that they are exempt from Strategic Environmental Assessment under Section 7(1). A copy of the Agency's determination can be viewed via the Scottish Government's SEA database at the following website:

www.scotland.gov.uk/Topics/Environment/SustainableDevelopment/14587/SEAG

Financial Effects

18. The Cabinet Secretary for Culture and External Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.